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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,111	12/29/2000	Wendell P. Noble JR.	M4065.0019/P019-A	6297

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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP  
2101 L STREET NW  
WASHINGTON, DC 20037-1526

EXAMINER

THOMAS, TONIAE M

ART UNIT

PAPER NUMBER

2822

DATE MAILED: 11/04/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/750,111	NOBLE ET AL.
	Examiner	Art Unit
	Toniae M. Thomas	2822

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply 30 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

Days

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 August 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-33 and 47-54 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-33 and 47-54 are subject to restriction and/or election requirement.

#### Disposition of Claims

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ . 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Introduction***

1. Applicant's election without traverse of Group I (claims 1-33) in Paper No. 5 is acknowledged. However, the Applicant is required to elect either the method of making or the method of using (MPEP §806.05(i)). Therefore, the restriction requirement that was mailed on 13 August 2002 is being made again in this action.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 47-52, drawn to a method of storing a binary logic value, classified in class 365, subclass 250.01.
  - II. Claims 53-54, drawn to a method of making, classified in class 438, subclass 313.
2. The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as process of making and process of using the product. Since the product is not allowable, restriction is proper between said method of making and method of using.

### ***Election of Method of Making***

3. If Applicant elects the method of making, then the product claims 1-33 will be examined along with the elected invention (MPEP § 806.05(i)).

### ***Election of Method of Using***

4. If Applicant elects the method of using, then the product claims 1-33 will not be examined along with the elected invention because the product and the method of using can be shown to be distinct (MPEP § 806.05(i)). The product and method of using can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product. For example, an SRAM cell comprising two back-to-back inverters can be used to practice the process of using as claimed.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toniae M. Thomas whose telephone number is (703) 305-7646. The examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amir Zarabian can be reached on (703) 308-4905. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3432 for regular communications and (703) 305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

*JMJ*

November 3, 2002

*[Signature]*  
Mary Wilczewski  
Primary Examiner